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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,048	12/14/2001	Matthias Stefan Bierbrauer	DE920000125US1 (210)	7481
46320	7590	01/15/2009	EXAMINER	
CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP			LUDWIG, MATTHEW J	
STEVEN M. GREENBERG			ART UNIT	PAPER NUMBER
950 PENINSULA CORPORATE CIRCLE			2178	
SUITE 3020				
BOCA RATON, FL 33487				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MATTHIAS STEFAN BIERBRAUER
and
DANIEL HAENLE

Application No. 10/020,048
Technology Center 2100

Mailed: 15 January 2009

Before LAWRENCE J. BANKS *Paralegal Specialist*
BANKS, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on 12 December 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith

being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, HEADINGS

A review of the file indicates that the Examiner's Answer filed 5 February 2008 does not comply with the guidelines provided in MPEP § 1207.02 because it does not contain all of the required heading items. Specifically, the Examiner's Answer must contain the following heading items in the following order:

- (1) *Real party in interest.*
- (2) *Related appeals and interferences.*
- (3) *Status of claims.*
- (4) *Status of amendments After Final.*
- (5) *Summary of claimed subject matter.*
- (6) *Grounds of rejection to be reviewed on appeal.*
- (7) *Claims Appendix.*
- (8) *Evidence Relied Upon.*
- (9) *Grounds of Rejection.*
- (10) *Response to Argument.*
- (11) *Related Proceedings Appendix.*

An in-depth review of the Examiner's Answer indicates that the following sections are missing from the Examiner's Answer mailed 5 February 2008 and/or are not complete or clear in setting forth agreement or disagreement with the Appeal Brief:

(11) “Related Proceedings Appendix”,

A substitute Examiner’s Answer that is in compliance with the guidelines is required. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

EXAMINER’S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER’S ANSWER. The examiner’s answer is required to include, under appropriate headings, in the order indicated, the following items:

....

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner’s Answer mailed 5 February 2008 is deficient because the “Evidence Relied Upon” section fails to include the reference(s) Hoffert et al., USPN 5,903,892 cited on page(s) 3-6 in the Examiner’s Answer’s grounds of rejection of claims 1-17 under 35 USC § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) issue a PTOL-90 containing the missing *Appendix(s)/Heading(s)*;

2) issue a PTO-90 citing the missing references listed under the

Evidence Relied Upon section, paragraph (8); and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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